

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:LAD:LA:TL-N-3555-00
DRJojola

date:

to: Chief, Quality Measurement Branch, Los Angeles District
Peter Lu, Innocent Spouse Relief Project

from: District Counsel, Los Angeles District, Los Angeles

subject: Statute of Limitation

Issue

For purposes of extending the assessment statute from three to six years, does a taxpayer's election to seek relief pursuant to the provisions of I.R.C. § 6015 allow the Commissioner to allocate income among the taxpayers prior to applying the provisions of I.R.C. § 6501(e).

Short Answer

It is our opinion, that a taxpayer's election to seek relief pursuant to the provisions of I.R.C. § 6015 does not authorize the Commissioner to allocate income among the taxpayers prior to applying the provisions of I.R.C. § 6501(e).

Legal Analysis

The taxpayers timely filed a joint [REDACTED] individual return with the Commissioner. The general three year period for assessment provided for by I.R.C. § 6501(a) expired on [REDACTED]. The taxpayers' joint return self-reports gross wage income of \$[REDACTED].

Prior to the expiration of the relevant three-year statute of limitation, a correspondence audit with the taxpayers took place. During the course of the audit, a determination was made that the taxpayers failed to report wage income of \$[REDACTED] received during the [REDACTED] taxable year.

After such determination was made, the electing spouse sought relief from the resulting joint liability based upon the provisions of I.R.C. § 6015. A determination has been made that the electing spouse is eligible for the relief requested. The unreported wage income that forms the basis for the deficiency determination is

attributable to the non-electing spouse. The taxpayers' self-reported wage income is attributable to the electing spouse. According to the QMS Reviewer assigned to the matter, a notice of deficiency has not been issued to the non-electing spouse.

You have sought our opinion on the issue of whether a taxpayer's election to seek relief pursuant to the provisions of I.R.C. § 6015 authorizes the Commissioner to allocate income items among the taxpayers prior to applying the provisions of I.R.C. § 6501(e). The purpose of your inquiry is to determine whether the general three year assessment statute can be extended to six years. In the immediate case, if an allocation of income is made among the taxpayers prior to applying the provisions of I.R.C. § 6501(e), the resulting omission of income by the non-electing spouse [REDACTED] would arguably be in excess of 25% of the amount of gross income allocated to the non-electing spouse [25% multiplied by \$0.00]. Thus, you argue that the resulting deficiency could be assessed against the non-electing spouse at any time within six years from the filing of the relevant return.

After considering I.R.C. § 6015's statutory language and legislative history, it is our opinion that an allocation of income items is not to be made among taxpayers prior to applying the provisions of I.R.C. § 6501(e). It is readily apparent that I.R.C. § 6015(d) provides for the allocation of income items among taxpayers in limited circumstances. Nevertheless, it is our opinion that the allocation framework provided for in I.R.C. § 6015(d) was designed to allocate a determined deficiency among taxpayers when an election has been made to limit liability pursuant to the provisions of I.R.C. § 6015(c). The allocation provisions of I.R.C. § 6015(d) should not be utilized as a tool to extend the assessment statute date provided for by I.R.C. § 6501.

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By: _____

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